

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZORAN SAVIC,

Defendant-Appellant.

UNPUBLISHED

September 19, 2006

No. 261129

Van Buren Circuit Court

LC No. 04-013996-FH

Before: Sawyer, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

A jury convicted defendant of failure to use due care when approaching or passing a stationary emergency vehicle causing injury to an officer, MCL 257.653a. The court sentenced defendant to pay court costs and fees or, alternatively, to serve 100 days in jail. Defendant appeals as of right. We reverse.

Defendant was traveling eastbound on I-94 in the early morning hours of January 28, 2004, when his box truck collided with a Michigan State Police patrol vehicle. The vehicle was parked on the shoulder with its emergency lights on, and the state trooper who had parked it there was standing nearby assisting with another commercial truck that had jackknifed, partially blocking the roadway. The collision sent the patrol vehicle into the state trooper, breaking the trooper's leg.

Defendant argues that the trial court committed plain error in admitting certain testimony from a motor carrier inspector, Paul Cliff. First, defendant challenges Cliff's testimony estimating defendant's average rate of speed from Joliet, Illinois, to the point of the collision in Paw Paw, Michigan. Using a computer program, cliff estimated the speed to be approximately 55 miles per hour. Defendant alleges that the testimony was speculative and misleading, but he abandons this issue by failing to cite any legal authority to support his claim that the introduction of the evidence requires reversal. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). The estimated speed did not purport to be anything more than an estimate of defendant's average speed, so defendant fails to demonstrate how the trial court abused its discretion by allowing the testimony. Defendant also argues that the trial court committed plain error by allowing Cliff to testify to the condition of defendant's brakes following the collision. Because defendant failed to object to Cliff's testimony at trial, we review this issue for plain error that affects defendant's substantial rights. MRE 103(d). Cliff testified that, as a motor carrier officer, he was trained to certify that all vehicles are operating within specifications and that it

was part of his responsibility to inspect commercial vehicles for mechanical defects and to examine the operability of brakes following a collision. Under the circumstances, defendant fails to demonstrate how the trial court abused its discretion or committed plain error by allowing Cliff to testify about something within his expertise. *People v Murray*, 234 Mich App 46, 52; 593 NW2d 690 (1999).

Defendant next argues that he is entitled to reversal of his conviction by the trial court's refusal to give a requested limiting instruction to the jury regarding the appropriate use of other-acts evidence. We review preserved claims of instructional error de novo. *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004). Defendant claims that the trial court should have instructed the jury regarding the limited permissible use of other-acts testimony relating to defendant's lack of compliance with the 11-hour and 14-hour rules and other log book violations in the two days before the collision. He contends that the log book violations were not antecedent events that were so inextricably intertwined with the events culminating in the collision as to be an essential part of those events the appropriate use of other-acts evidence. Rather, they are prior bad acts that were relevant, if at all, only for a limited purpose and the jury should have been instructed accordingly. Preserved claims of instructional error are subject to review de novo. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005).

In *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978):

It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause. When such is the case and the antecedent event incidentally involves the commission of another crime, the principle that the jury is entitled to hear the "complete story" ordinarily supports the admission of such evidence.

Stated differently:

"Evidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime." [Citations omitted.]

As our Supreme Court noted further in *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996), "there are substantial limits on the admissibility of evidence concerning other bad acts. Nevertheless, it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place."

In *Delgado*, *supra* at 83-84, the Court determined that the defendant's sale of a "sample" of heroin to an undercover officer on January 17, 1974, as a condition precedent to a larger sale, was part of the circumstances surrounding that larger sale of heroin to that same officer five days later, which sale formed the basis for the charges on which the defendant was convicted. Similarly, in *Sholl*, *supra* at 741-742, the Court determined that testimony that the defendant used marijuana the evening that he and the victim had sexual relations was part of the circumstances surrounding the criminal sexual conduct offense and, therefore, did not constitute evidence of other bad acts. But in *People v Rustin*, 406 Mich 527, 530-532; 280 NW2d 448

(1979), the Court reversed the defendant's conviction after concluding that the trial court erred in admitting testimony of a sale of a controlled substance to an undercover officer, five days before the transaction forming the basis for the charges against the defendant, because there was no showing that the two transactions were "inextricably related" or that the second transaction followed from the first "as does an effect follow from a cause."

The question in this case was whether defendant used due care and caution *when approaching or passing* the officer's patrol car, not whether defendant used due care and caution throughout the course of his multi-day trip. No evidence was presented that defendant's alleged violations of federal guidelines relating to duty and rest time in the days before the collision were inextricably related to the collision, or that the collision followed from defendant's alleged violations "as does an effect follow from a cause." *Id.* The testimony regarding defendant's compliance with those federal guidelines constitutes testimony of other-acts committed by defendant, MRE 404(b), rather than evidence necessary to provide a complete picture of disputed events. The trial court's failure to provide a limiting instruction regarding the jury's use of this prior acts evidence necessitates reversal of defendant's conviction. *People v DeMartzex*, 390 Mich 410, 416-417; 213 NW2d 97 (1973); *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999).

Reversed.

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald